

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT, and WEST CONTRA COSTA
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014120096

ORDER DENYING IN PART AND
GRANTING IN PART STUDENT'S
MOTION TO AMEND COMPLAINT

On November 24, 2014, Student filed a due process hearing request (complaint), naming Fairfield-Suisun Unified School District (Fairfield-Suisun) and West Contra Costa Unified School District (West Contra Costa). On December 24, 2014, Student filed a motion to amend the complaint, and attached the proposed amended complaint. On December 30, 2014, Fairfield-Suisun filed an opposition to the motion to amend. West Contra Costa County did not respond.¹

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)² The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) This is true even if the child has not yet been found to have a disability that makes him eligible for special education, if certain requirements are met. (34 C.F.R. § 300.534.)

¹ Shortly before this order was finalized, Student called OAH and said a response to Fairfield-Suisun's opposition would be filed. However, although OAH routinely waits three business days to allow opposing parties to respond to a motion. No such period exists for the moving party to file a response to an opposition to a motion.

² All statutory citations are to title 20 United States Code unless otherwise indicated.

Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an individualized educational program team meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e)(2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, "(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed." (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).) These procedural rights extend to the parent of a child who has not yet been found to have a disability, but the LEA had knowledge that the child had a disability before the event/s that resulted in the discipline. (34 C.F.R. § 300.534(b).)

DISCUSSION

Both the original and amended complaints allege that Student is a child with a disability, and therefore should have been afforded the protections of the IDEA when West Contra Costa allegedly expelled him in September 2014, even though neither district had ever identified him as such. Therefore, OAH set this matter for both an expedited hearing on this issue, and an unexpedited hearing on other issues pertaining to both school districts. The prehearing conference for the expedited portion of the case is set for January 5, 2015, and the hearing for that portion of the case is to begin on January 8, 2015. The unexpedited portion of the complaint is set for a PHC on January 12, 2015, and a due process hearing on January 20, 2015.

The allegations in both the original complaint and the amended complaint pertaining to Student's alleged expulsion from West Contra Costa are very similar. There are two major difference between the two complaints. The first is the addition of an allegation against Fairfield-Suisun that it suspended Student for a total of 10 days during the 2013-2014

school year, and did not hold a manifestation determination IEP team meeting. This adds a completely new party and claim to the expedited case. The second difference is the addition of an issue that Student has now been assessed by West Contra Costa, an IEP team meeting was held on December 9, 2014, and the IEP team found Student ineligible for special education. This allegation is not relevant to the expedited matter. Further, although the filing of the amended complaint will result in the setting of new dates for a mediation, PHC and due process hearing for the unexpedited issues, there is no provision in the law to permit the expedited issue to be continued or reset. And this is the correct position taken by Fairfield-Suisun in its opposition. Accordingly, as to Student's motion to amend the expedited portion of the complaint to add Fairfield-Suisun and the 2013-2014 school year as an issue, this portion of the motion is denied.

The amended complaint is timely as to the unexpedited issues, and adds the unexpedited issue pertaining to the IEP team meeting on December 9, 2014. Accordingly the amended complaint shall be deemed filed on the date of this order as to the unexpedited issues.

ORDER

1. Student's motion to amend is denied to the extent that Fairfield-Suisun is added as a party to the expedited matter and the 2013-2014 school year is placed at issue as an expedited claim.³

2. Student's motion to amend is granted as it pertains to the unexpedited issues, including the new issue concerning the IEP team meeting of December 9, 2014.

3. All applicable timelines shall be reset as of the date of this order as to the unexpedited issues. OAH will issue a scheduling order with the new dates.

4. **The expedited issue shall go forward as currently scheduled.**

DATE: December 30, 2014

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

³ Nothing herein prevents Student from filing a new expedited complaint against Fairfield-Suisun concerning the 2013-2014 school year. Nor is Student precluded from dismissing the current action and filing a new complaint containing all of its claims, expedited and unexpedited, as they pertain to both school districts.